REMARKS

By this paper, dependent claim 6 has been amended to add subject matter previously inadvertently dropped from the claim. Claim 6 has been amended to minimize the number of issues for appeal.

In the outstanding Office action dated June 23, 2005, claims 1-3, 5, 7-9, 12-15, 17, 20, 22, 36, 38 and 39 were rejected under 35 U.S.C. § 102(e) as being anticipated by Drasler et al. (6,245,101). Additionally, claims 10 and 23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Drasler et al. in view of Taheri (5,617,878). Additionally, claim 37 was rejected by the Examiner and in doing so stated that "Drasler does not disclose a hinge structure having the same profile as that of the pair of the longitudinal struts. However, it is well known to provide a hinge structure having a profile the same as that of a beam of a stent and further it would have been obvious to one of ordinary skill in the art at the time the invention was made to size the beam as recited in the claim because changing the size/dimension of a component as one desires is quite within level of one of ordinary skill in the art."

Applicants respectfully request the finality of the outstanding Office action be withdrawn. In the June 23, 2005 Office action, the Examiner stated that the action was made final even though it is a first action in the case because "All claims are drawn to the same invention previously claimed and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application." On the contrary, it is respectfully submitted that none of claims 36-39 could have been finally rejected on the grounds and art of record in the prior Office action dated December 1, 2004. It is also respectfully submitted that neither Drasler nor Taheri, either alone or in combination, teach the subject matter recited in claims 36-39.

Notably, claim 36 recites a medical apparatus including at least a pair of adjacent generally longitudinal members each having a circumferential width, wherein the radial thickness is greater than a circumferential width and wherein at least one of the at least a pair of longitudinal members extend a length of one cell of the open cells. Clearly, the cited Drasler reference does not teach longitudinal members having a radial thickness greater than a circumferential width, the longitudinal members extending a length of one cell of the medical apparatus. On the contrary, the Drasler reference discloses a hinge which has a radial thickness greater than a circumferential width but such hinge does not extend the length of a cell of the Drasler et al. stent.

Turning to claim 37, it is highly significant that the Drasler et al. reference teaches a balloon-expandable stent including a hinge providing the strength to support a blood vessel and resist vessel contraction as well as to provide the stent with non-crush characteristics in combination with struts configured to provide the stent with a compression yield force that could be properly overcome by balloon expansion (See Col. 7, line 50 et seq.). The Drasler et al. reference also teaches a self-expandable stent including a hinge having a greater radial dimension than the struts to resist the formation of an oval cross section associated with crush deformation (See Col. 8, line 66 et seq.). Accordingly, it is respectfully submitted that rejecting claim 37 for obviousness in view of the Drasler et al. reference is misplaced as one of ordinary skill in the art would not have modified the teachings of the Drasler et al. reference as suggested by the Examiner, that is, to provide a hinge structure having a profile the same as that of a strut. So modifying Drasler et al. would be completely contrary to its teachings.

Each of claims 38 and 39 recite an endoprosthesis including beams having a circumferential width less than a radial thickness, wherein at least one of the beams has a

generally uniform cross-section along its length. In view of the Examiner's position that "hinges 23 are portions of the struts forming the Drasler stent" and since the Drasler et al. reference clearly teaches hinges having a different cross-sectional profile than the struts forming the disclosed Drasler et al. stent, Drasler et al. clearly does not teach an endoprosthesis wherein one of the plurality of circumferential beams have a generally uniform cross-section along its length.

Therefore, it is respectfully submitted that each of claims 36-39 could not have been rejected in view of the art previously cited and are in fact allowable over the Drasler et al. reference. Thus, the finality of the present outstanding Office action should be withdrawn.

For similar reasons, each of independent claims 1, 12 and 17 as well as their respective dependent claims are believed to be allowable over the cited art. Drasler et al. does not teach the medical apparatus including at least a pair of adjacent generally longitudinal members each having a circumferential width, wherein the radial thickness is greater than the circumferential width as recited in claim 1 and each of its dependent claims. On the contrary, the Drasler et al. reference merely teaches a hinge with a radial thickness greater than its circumferential width. Independent claim 12 and its dependent claims recite a single-piece prosthesis including a plurality of circumferential spaced beams, adjacent beams including forward merge sections and aft merge sections as well as at least a pair of adjacent circumferential spaced beams each having a circumferential width less than the radial thickness. The Drasler et al. reference fails to anticipate claim 12 and its dependent claims since it merely teaches hinges having a circumferential width less than a radial thickness and not the recited adjacent beams having both forward and aft merge sections as well as a circumferential width less than a radial thickness. Finally, claim 17 and its dependent claims recite a single piece endoprosthesis including a plurality of longitudinal beams, at least a pair of longitudinal beams each having a radial

thickness greater than a circumferential width, the endoprosthesis having an expanded configuration wherein each beam is mostly curved throughout its length. In addition to lacking beams having a radial thickness which is greater than a circumferential width, the Drasler et al. reference also is lacking the teaching of an endoprosthesis having expanded configuration wherein each beam is mostly curved throughout its length. Clearly, the struts disclosed in the Drasler et al. reference do not meet these claim limitations.

Therefore, for all of the foregoing reasons, it is respectfully submitted that each of the pending claims are allowable over the cited art.

CONCLUSION

Applicants have attempted to completely respond to the rejections set forth in the outstanding Office action. In view of the above amendments and remarks, Applicants respectfully request that the application be reconsidered, the claims allowed and the application passed to issue.

Respectfully submitted,

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